

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
MAGISTRATE JUDGE BOYD N. BOLAND

Civil Action No. 00-BB-222

MARQUIS STEWART,

Plaintiff,

v.

DAVE ROBERTS,

Defendant.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

This case is brought by the plaintiff, Marquis Stewart, a prisoner at Fremont Correctional Facility, against his case manager, Dave Roberts. Stewart claims he was subjected to excessive force in violation of the Cruel and Unusual Punishments Clause of the Eight Amendment to the United States Constitution. This court has subject matter jurisdiction under 28 U.S.C. § 1343 (3) and (4) and 42 U.S.C. § 1983. Venue is proper under 28 U.S.C. § 1391(b) because the defendant resides in the State of Colorado and the events giving rise to the claim occurred here.

At issue is whether the prisoner's Eight Amendment right to protection against excessive force was violated when force was applied against him following a verbal altercation with his case manager. The case was tried to the court on May 10, 2001. Based on all of the evidence I received and the arguments at trial, I conclude that Stewart's constitutional rights were not violated, and I enter judgment in favor of the defendant.

Findings of Fact

In mid-October 1999, Stewart expressed an interest to his case manager, Roberts, in receiving an interstate transfer to a prison in either New York, New Jersey, or Pennsylvania in order to be closer to his family. On December 9, 1999, Stewart went to Roberts's office to discuss the desired transfer. Roberts informed Stewart that Stewart must write a letter requesting a transfer. The letter would have to be approved by Roberts before Stewart would be allowed to apply for an interstate transfer. Stewart drafted the letter and took it to Roberts the next day, December 10, and requested a copy of the transfer application. Roberts did not provide a copy of the application form at that time.

Roberts testified that in order for a prisoner to be considered for an interstate transfer from a Colorado prison to a prison in another state, Colorado and the destination state must be members of an interstate compact. In addition, the transferring prisoner must have immediate family members residing in the destination state. Roberts further testified that Colorado does not have an interstate compact with New York or New Jersey, and Stewart does not have any immediate family in Pennsylvania. Consequently, on December 13, when Stewart returned to Roberts's office requesting a transfer application, Roberts informed Stewart that he was not eligible to transfer to any of the requested states.

An argument followed. Stewart raised his voice and used profanity. Roberts warned Stewart to calm down, but Stewart left Roberts's office shouting obscenities. Roberts attempted to take control of Stewart by grabbing his arm, but Stewart pulled away. Roberts then applied an arm-lock to Stewart, bending Stewart's arm behind his back, and directed him to the control room. The control room is located approximately fifteen feet from Roberts's own office. When Roberts and Stewart reached the doorway of the control room, Roberts asked the correctional

officers for handcuffs. Roberts then turned Stewart around and forcefully pinned him against the wall so that one of the correctional officers could apply handcuffs. Stewart was then placed in a cell in the segregation ward.

Testimony established that it is prison policy to provide a physical examination to a prisoner whenever force is applied to restrain him. Consistent with this policy, Stewart was taken to the prison infirmary within a few minutes of the incident and was examined by a nurse. The nurse found a slight red mark on Stewart's left clavicle and noted that Stewart complained of lower back pain, but she found no visible evidence of lower back trauma (Exhibit 2).¹

Stewart remained in segregation for two months. As a result of this incident, he was also charged with and convicted of Penal Discipline violations for "advocating or creating facility disruption" and for "verbal abuse." (Exhibit 3). Stewart appealed these convictions, however, and the conviction for creating a facility disruption was reversed. (Exhibit 6).

Stewart complained of back and neck pain while in segregation, and was seen by a nurse each time he filled out a "request for sick call." He received medications, including mild pain pills and muscle relaxants.

On December 21, 1999, Stewart filed a formal grievance with the Department of Corrections concerning the incident with Roberts. Because he was not satisfied with the results of the grievance process, on February 2, 2000, Stewart filed this action alleging excessive force in violation of the Eighth Amendment.

¹At trial, Stewart alleged that Roberts put his knee in the small of Stewart's back and applied pressure, causing pain and serious injury. Significantly, the anatomical form completed by the nurse shortly after the incident contains no mention of Roberts using his knee. Instead, the form states that Stewart complained of pain "from 'twisting.'"(Exhibit 2). The nurse testified that she would have noted the alleged use of a knee in the back had Stewart mentioned it during the examination.

Conclusions of Law

The United States Constitution dictates that one shall not be subjected to “cruel and unusual punishments.” U.S. Const. amend. VIII. The language of the Eighth Amendment indicates “an intention to limit the power of those entrusted with the criminal-law function of government.” Whitely v. Albers, 475 U.S. 312, 318, (1986) (quoting Ingram v. Wright, 430 U.S. 651, 664, (1977)).

Although the Eighth Amendment limits the use of force by prison officials, a certain degree of force may be necessary in a prison setting to maintain the discipline, order, and safety of all the prisoners. The Eighth Amendment’s restriction, however, does assure a prisoner’s “right to be free from the terror of instant and unexpected death” at the hands of his keepers. Northington v. Jackson, 973 F.2d 1518, 1524 (1992) (quoting Burton v. Livingston, 791 F.2d 97, 100 (8th Cir. 1986)). Accordingly, “whenever prison officials stand accused of using excessive physical force in violation of the Cruel and Unusual Punishments Clause, the core judicial inquiry is . . . whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.” Hudson v. McMillian, 503 U.S. 1, 6-7 (1992); see Whitely 475 U.S. at 320-21 (1986).

The Supreme Court also has made clear that “[d]e minimis applications of force are necessarily excluded from the cruel and unusual punishment inquiry.” Northington, 973 F.2d at 1524. In other words, “[n]ot every push or shove, even if it may later seem unnecessary in the peace of a judge’s chambers, violates a prisoner’s constitutional rights.” Id. (quoting Johnson v. Glick, 481 F.2d 1028, 1033 (2d Cir.); see also Hudson, 503 U.S. at 9-10 (“The Eighth Amendment’s prohibition of ‘cruel and unusual’ punishments necessarily excludes from

constitutional recognition de minimis uses of physical force, provided that the use of force is not of a sort ‘repugnant to the conscience of mankind.’”) If the force used is so minor that any reasonable or unreasonable motive for applying it is justified, the injuries do not merit a cause of action. The law recognizes that a certain amount of force may be necessary and may be applied.

The only injury to Stewart observed by the nurse based on her examination minutes after the incident was a “slight” red mark on Stewart’s clavicle. (Exhibit 2). There was no evidence of bruising, swelling, or lacerations of any kind. Nor was there any evidence of an injury which could have resulted in Stewart’s inability to play basketball, lift weights, or run fast, as Stewart claimed at trial. The red mark on the clavicle is consistent with Robert’s testimony that he applied only slight force and an arm-lock to control Stewart. Based on this evidence, I conclude that the evidence establishes that Roberts applied “de minimis” force not sufficient to constitute a violation of Stewart’s Eighth Amendment rights.

Alternatively, even if the force used against Stewart was more than “de minimis,” it was not excessive. The issue presented in evaluating a claim of excessive force is “whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm.” Whitely 475 U.S. at 320-21. The factors I should consider are “the need for the application of force, the relationship between the need and the amount of force that was used, and the extent of the injury.” Id. at 321. Stewart was agitated and was using profane and insulting language against a prison official. Other prisoners could observe Stewart’s behavior, undermining Roberts authority. The force used here was only that necessary to control Stewart and move him to segregation. Finally, the force used was applied in good faith to maintain order and not maliciously or sadistically to cause injury. Consequently, Stewart’s Eighth Amendment right to be free from the unreasonable use of force was not violated.

Judgment

For these reasons, IT IS ORDERED that judgment is entered in favor of the defendant and against Stewart on all claims asserted.

Dated May 18, 2001.

BY THE COURT:

Boyd N. Boland
United States Magistrate Judge